

Amendment No. 1 to HB1045

Terry  
Signature of Sponsor

**AMEND Senate Bill No. 212\***

**House Bill No. 1045**

by deleting all language following the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 63, Chapter 1, Part 1, is amended by adding the following new section:

(a) Notwithstanding any law, if the licensing authority of a healthcare prescriber learns that the healthcare prescriber is the subject of an indictment for a federal or state criminal offense that involves a controlled substance violation or sexual offense, then the chair of the licensing authority or administrative staff of the licensing authority designated by the chair shall automatically and immediately restrict the license of the healthcare prescriber by removing the prescriber's authorization to prescribe Schedule II controlled substances in this state until the case against the healthcare prescriber reaches final disposition. The chair of the licensing authority or administrative staff of the licensing authority designated by the chair shall immediately send written notice of the license restriction to the healthcare prescriber. Upon receipt of sufficient proof, the chair of the licensing authority or administrative staff of the licensing authority designated by the chair shall remove the license restriction if:

(1) The healthcare prescriber is acquitted by a verdict of the jury upon the merits; or

(2) The prosecution is dismissed, or a nolle prosequi is entered by the prosecuting authority.

(b) Notwithstanding any law, if the licensing authority of a healthcare prescriber learns that the healthcare prescriber is convicted of a federal or state criminal offense

that involves a controlled substance violation or sexual offense, then the chair of the licensing authority or administrative staff of the licensing authority designated by the chair shall automatically and immediately, without further action by the licensing authority, revoke the license of the healthcare prescriber. The chair of the licensing authority or administrative staff of the licensing authority designated by the chair shall immediately send written notice of the license revocation to the healthcare prescriber. If the conviction on which the revocation is based is subsequently overturned or reversed, then the chair of the licensing authority or administrative staff of the licensing authority designated by the chair shall:

(1) Grant the prescriber a new license if the prescriber otherwise satisfies the qualifications for licensure under this title and the criminal charges against the prescriber involving a controlled substance violation or sexual offense have reached final disposition; or

(2) Grant the prescriber a new license subject to the restriction described in subsection (a) if the prescriber otherwise satisfies the qualifications for licensure under this title, but the criminal charges against the prescriber involving a controlled substance violation or sexual offense have not reached final disposition.

(c)

(1) Failure by a person licensed under and required by chapter 7 or 19 of this title to collaborate with a physician for any act within the person's licensed scope of practice constitutes a threat to the public health, safety, and welfare and imperatively requires emergency action by the person's licensing authority.

(2) Notwithstanding any law, if the licensing authority of a person licensed under and required by chapter 7 or 19 of this title to collaborate with a physician for any act within the person's licensed scope of practice learns that the person has failed to comply with the collaboration requirement, then the chair

of the licensing authority, or the chair's designee, shall direct the administrative staff to automatically and immediately, without further action of the licensing authority, suspend the license of the person until the licensing authority receives sufficient proof that the person is in compliance with the collaboration requirements of this title.

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 7, Part 1, is amended by adding the following new section:

(a)

(1) Failure by a person licensed under and required by this chapter to collaborate with a physician for any act within the person's licensed scope of practice constitutes a threat to the public health, safety, and welfare and imperatively requires emergency action by the board.

(2) Notwithstanding any law, if the board learns that a person licensed under this chapter and subject to a requirement to collaborate with a physician for any act within the person's licensed scope of practice has failed to comply with the collaboration requirement, then the board chair, or the chair's designee, shall direct the administrative staff to automatically and immediately, without further action by the board, suspend the person's license until the board receives sufficient proof that the person is in compliance with the collaboration requirements of this chapter.

(3) The licensure sanction authorized by this subsection (a) is supplementary to, and does not limit, the authority of the board to take other disciplinary action against a licensee the board determines to be in violation of this chapter.

(b) If a healthcare prescriber licensed under this chapter is the subject of a disciplinary action by the board for conduct related to improper prescribing or diversion of a controlled substance, but retains an active license with prescribing authority

following the disciplinary action, then the healthcare prescriber shall not prescribe a controlled substance in this state unless the healthcare prescriber is working in collaboration with a physician who is physically present at the same practice site and licensed to prescribe controlled substances in this state. The board shall determine the period of time that a healthcare prescriber is subject to the on-site supervision requirement of this subsection (b), which must not be less than two (2) years.

SECTION 3. Tennessee Code Annotated, Title 63, Chapter 19, Part 1, is amended by adding the following new section:

(a)

(1) Failure by a person licensed under and required by this chapter to collaborate with a physician for any act within the person's licensed scope of practice constitutes a threat to the public health, safety, and welfare and imperatively requires emergency action by the board.

(2) Notwithstanding any law, if the board learns that a person licensed under this chapter and subject to a requirement to collaborate with a physician for any act within the person's licensed scope of practice has failed to comply with the collaboration requirement, then the board chair shall direct the administrative staff to automatically and immediately, without further action by the board, suspend the person's license until the board receives sufficient proof that the person is in compliance with the collaboration requirements of this chapter.

(3) The licensure sanction authorized by this subsection (a) is supplementary to, and does not limit, the authority of the board to take other disciplinary action against a licensee the board determines to be in violation of this chapter.

(b) If a healthcare prescriber licensed under this chapter is the subject of a disciplinary action by the board for conduct related to improper prescribing or diversion of a controlled substance, but retains an active license with prescribing authority

following the disciplinary action, then the healthcare prescriber shall not prescribe a controlled substance in this state unless the healthcare prescriber is working in collaboration with a physician who is physically present at the same practice site and licensed to prescribe controlled substances in this state. The board shall determine the period of time that a healthcare prescriber is subject to the on-site supervision requirement of this subsection (b), which must not be less than two (2) years.

SECTION 4. Tennessee Code Annotated, Section 4-5-322(h)(5), is amended by deleting the subdivision and substituting the following:

(5)

(A)

(i) Except as provided in subdivision (h)(5)(B), unsupported by evidence that is both substantial and material in the light of the entire record;

(ii) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact;

(B)

(i) Unsupported by a preponderance of the evidence in light of the entire record, if the administrative findings, inferences, conclusions, or decisions were made by a board, council, committee, agency, or regulatory program created pursuant to chapters 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31 of title 63;

(ii) In determining whether the administrative findings, inferences, conclusions, or decisions are supported by a preponderance of the evidence, the court shall take into account whatever in the record fairly

detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

SECTION 5. Tennessee Code Annotated, Section 68-11-218, is amended by deleting the section and substituting the following:

(a) The chief administrative official of each hospital or other facility shall report to the respective licensing board, committee, council, or agency the following:

(1) Any disciplinary action taken concerning any person licensed under title 63 or this title, when the action is related to professional ethics, professional incompetence, negligence, moral turpitude, or drug or alcohol abuse; and

(2) Any information that the chief administrative official reasonably believes indicates that a person licensed under title 63 or this title has been referred to or participated in a professional assistance program on two (2) or more separate occasions because the person:

(A) Inappropriately prescribed an opioid;

(B) Diverted an opioid;

(C) Engaged in sexual activity with a patient; or

(D) Has a mental or physical impairment that prevents the person from safely practicing the licensed profession.

(b)

(1) A report to a licensing board, committee, council, or agency made pursuant to subdivision (a)(1) must be in writing and must be made within sixty (60) days of the date of a disciplinary action described in subdivision (a)(1).

(2) A report to a licensing board, committee, council, or agency made pursuant to subdivision (a)(2) must be in writing, must be made on or before January 31 of each year, and must cover any referrals occurring during the previous calendar year.

(c) For purposes of this section, "disciplinary action" includes termination, suspension, reduction, or resignation of hospital privileges for any of the reasons listed in subsection (a).

(d) Notwithstanding § 63-1-150, § 63-6-228, or any other provision to the contrary, the hospital or facility shall make available to the respective licensing board, committee, council, or agency, for examination all records pertaining to a disciplinary action described in subdivision (a)(1).

(e) Any individual who, as a member of any committee, an employee, or a contractor of any hospital or facility, files a report pursuant to this section, is immune from liability to the extent provided in § 63-1-150.

SECTION 6. This act takes effect upon becoming a law, the public welfare requiring it, and applies to disciplinary actions taken or information first received on or after the effective date of this act.